GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute.—Industrial Dispute between the Workmen and the Management of M/s. Jairamdas Udyog, Private Ltd., Bangalore-2

Award of the Additional Industrial Tribunal, Bangalore—published.

Read the following papers :

(1) Letter No. A IT / No. 9:7/ 70-71, dated 3rd December 1970 from Sri S. T. Kulkarni, Presiding Officer, Additional Industrial Tribunal, Bangalore.

BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL, BANGALORE.

Dated 30th of November 1970.

Present :

Sri. S. T. Kulkarni, B A, (Hons.), LL.B.,

Presiding Officer.

A.I.D. No. 9 of 1968.

Workmen of M/s. Jairamdas Udyog Private Ltd., Bangalore, represented by The Secretary, Jairamdas Udyog Employees' Association, No. 70-A, Arcot Sreenivasachar Street, Bangalore-2.

I Party

Vs.

The Management of M/s. Jairamdas Udyog, Private Limited, Bangalore-2

II Party

Appearances.

For the I Party:—Sri M C Narasimhan, Advocate, Bangalore.

For the II Party:—Sri B. Gopaliah, Joint Secretary, Mysore State Employers' Association, Bangalore-4.

AWARD

The Government of Mysore being of opinion that an Industrial Dispute exists between the Workmen and the Management of M/s. Jairamdas Udyog Private Limited, Bangalore, referred the same to this Tribunal in their Order No. FCL 68 LLD 68, dated 18th March 1968, under Section 10(1) (d) of the Industrial Disputes Act, 1947 on the following points of dispute:—

"Whether the Management of M/s. Jairamdas Udyog Private Ltd., Bangalore, are justified in retrenching the workmen mentioned below with effect from 13th April 1967 ? If not, are these workmen entitled to reinstatement with back wages and continuity of service or any other relief ?

1. Sri N. Shivaji Rao.
2. Sri K. R. Ghorpade.
3. Sri K. L. Mohamed Hussain.
4. Sri Abdul Rahim,
5. Sri D. Paul."

2. After the receipt of this Reference, this case was registered as A. I. D No. 9/1968, and notices were issued to both the parties, and accordingly they appeared before this Tribunal through their respective representatives, and the I Party put in its Claim Statement on 23rd April 1968, and the II Party Management put in its Rejoinder on 8th May 1968, and the issues were settled on 4th June 1968. Thereafter, both the parties were allowed to lead evidence on their behalf, and arguments were also heard, and the case has to be now decided, and an Award has to be passed, on the basis of the evidence led, and the arguments advanced on behalf of both the parties.

3. The I Party alleges in its Claim Statement that the II Party was an establishment engaged in the manufacture of cutting tools, and it was a leading unit in that line of business, being the only concern of that type in the Mysore State. It further alleges that the II Party had illegally and abruptly terminated on 13th April 1967 the services of Five workmen *viz.*, Sriyuths N. Shivaji Rao K R. Ghorpade, K. L. Mohamed Hussain, Abdul Rahim and D Paul, who were all permanent employees and were skilled workmen with a considerable number of years of service to their credit, and the order passed by the II Party in this behalf was

mala fide and unjust, and was liable to be set side. It also alleges that the order passed by the II Party was abrupt and arbitrary, and it was served on the workmen with the help of the police, and it had been passed to crush or weaken their trade union activities, and it was further contrary to the provisions of Section 25-F of the Industrial Disputes Act, 1947 in as much as the payment of compensation was not in accordance with the Act, and the Notice was also vague and did not contain a true statement of facts regarding the alleged retrenchment. It further alleges that the reasons advanced during conciliation were not true and the action was *male fide*, and the retrenchment was violative of Section 25 (G) of the Industrial Disputes Act, in as much as the principle of 'last come first go' was not observed, and it was further contrary to the provisions of Section 33 of the Act as no permission or approval was obtained the same, and hence an Award may be passed setting aside the termination and/or retrenchment of the said five workmen.

5. The II Party contends by its Counter-Statement dated 8th May 1968 that the reference was bad and untenable in as much as there was no dispute between the workmen and Mangement on the date of reference, and further as the Secretary of the I Party Association who had signed the Claim Statement was incompetent to represent the said workmen as there were not even half-a-dozen out of the total strengh of 120 workmen who were members of that Association, and the remaining workmen had formed themselves into a different union registered under the Trade Unions Act. It further contends that it was false and misleading to state that the services of the workmen were terminated unjustly, in as much as their services had to be terminated, as they belonged to a particular catogory of workmen called as Setter *cum*-leading hands, whose function was mainly supervisory in nature, and further as there was a surplusage of such hands due to the reduction of the total mumber of shifts from three to one, and of the total strength of workmen from 235 to 80. It also contends that while effecting this retrenchment, the rules of retrenchment had been strictly followed, and the retrenched employees had accepted the same and received the notice, pay, compensation and benefits of unavailed leave without a demur and had given full discharge and the present complaint was *mala fide* and was on after-thought. It further contends that it was false to say that the order of termination was served on the workmen in the presence of and with the help of the police, and that the same (termination) came in the wake of the trade union activities of these workmen, in as

much as it (II Party) was not even aware of any such activity of these persons. It also contends that it was false to say that the Management had effected retrenchment of these workmen with the extraneous motive of crushing the union, and on the other hand the Association itself had set this ball in motion against the Management with the intention of killing the industry on account of its anti-capitalistic doctrine, and it is because of their activity that there was a reduction in the total number of workmen which in turn had resulted in the retrenchment of supervisory staff. It further contends that retrenchment was a managerial function and the code of discipline does not impose any limitation on the due discharge of that function, and it was wrong to say that the management had violated Section 25 (G) or Section 33 of the I. D. Act in retrenching the workmen. It lastly contends that it had retained all the senior hands while effecting retrenchment except in the case of Sri R. Ramadas who had been retained on special grounds in preference to his seniors as he had the experience of thread grinding, which his seniors did not have, and hence the reference may be rejected.

6. After the II Party put in its Counter-statement, the I Party put in its reply on 24th May 1968 denying all the allegations made therein and further praying that the same may be rejected and an Award may be passed in favour of the workmen as prayed in the Claim Statement.

7. In view of the contentions raised on behalf of both the parties, the following issues were settled on 4th June 1968 ; and were kept for hearing :—

"1. Whether the management of M/s Jairamdas Udyog (P) Ltd., Bangalore, are justified in retrenching the five workmen referred to in the order of reference with effect from 18th April 67 and if not, are these workmen entitled to reinstatement with back wages and continuity of service ?

2. To what other relief are they entitled to ?"

3. My findings about these issues are:—
(1) Yes, justified ; not entitled to any reliefs.
(2) Not entitled to any reliefs.

Reasons

At the time of hearing, Sri Rathnakar Kailaje (MW. 1), Secretary of the Company was examined on behalf of the II Party

Management, and the documents at Exhibits M1 to M 28 were also got marked, while on behalf of the I Party witnesses D. Paul, P.R. Ghorpade, Abdul Rahim and M.S. Krishnan (W W 1 to WW-4) were examined and the documents at Exhibits W 1 to W 14 were got marked. I have now to record my findings in respect of the above mentioned issues in the light of the evidence produced on behalf of both the parties, and the arguments advanced on their behalf.

9. For the purpose of deciding about Issue No.1 which is the main point for consideration in this case, we shall have to see whether the retrenchment effected by the II Party Management was necessitated due to some genuine difficulty and *bona fide* reasons. The grounds put forth by the II Party in this respect are that originally their factory was working in three shifts, and there were in all about 345 workmen out of whom 9 were Setter-*cum*-leading hands, and the number of shifts was reduced to two in August 1965, by retrenching some of the workmen on that accounts, and there after, the number of shifts was reduced to only one from November 1966 onwards, by reducing the number of workmen to about 84, and that the number of Setter *cum*-leading hands which was originally 9, continued to be the same even after the number of shifts was reduced to two in August 1965 and to only one in November 1966. The explanation of the Management in this respect is that as the total number of workmen which was originally about more than 300, was reduced to even less than 100 after the number of shifts was reduced to only one in November 1966, there was absolutely no necessity of retaining the original number of Setter-*cum*-leading hands, and hence there was a necessity of reducing their number to four after November 1966, and consequently, their number was reduced accordingly in April 1967.

10. In support of its contention in this respect, the II Party Management has examined Sri Rathnakar Kailaje (MW.1) who is working as its Secretary since 1965. He states that in 1965, there were about 325 workmen in this factory, and they were divided into three shifts, and there were in all 9 Setter-*cum*-leading hands who were working in all the 3 shifts, and their duty was to set the machines and to supervise the work of operators on the machines. He further states that in August 1965 they closed down the working of the 3rd shift in the factory as they obtained an additional machinery in the nature

of balancing machinery, and at that time, they retrenched 56 workmen who used to work in the third shift, and they did not retrench any Setter-*cum*-leading hands on that occasion. He also states that the total strength of workmen in the factory was 241 including 9 Setter-*cum*-leading hands in October 1966, and this strength continued till 29th October 1966, and that from November 1966, the factory started working with only one shift with about 80 workmen including the original 9 Setter-*cum*-leading hands, and the same strength continued till April 1967. Ext. M1 is an abstract of Daily Attendance as on 14th October 1966, while Ext. M2 is an abstract of the Daily Attendance as on 1st April 1967. MW. 1 further states that the number shown in Ext. M2 includes the attendance of officers and staff also, whose total strength appears to be 47. It would be clear from this evidence that the original strength of workmen in the factory was reduced to even less than one-third after the factory began to work with only one shift from November 1966 onwards, and that even then, the number of Setter-*cum*-leading hands continued to be the same (nine) as it was at the time when the factory was working in 3 shifts.

11. So far as this aspect of the case *i. e.*, about the reduction of shifts in the factory is concerned, it is admitted by one of the witnesses examined on behalf of the I Party. For instance, WW. 1 D. Paul admits in his cross-examination (page 4) that before 1965, there were 3 shifts working in the II Party cocern, and thereafter 2 shifts were working, and at the time of his retrenchment, only one shift (General shift) was working. As regards the other witnessess examined on behalf of the I Party, none of them denies about the assertion of MW 1 in this beahlf. Moreover, even at the time of arguments, Sri M. C. Narasimhan. the learned counsel for the I Party, did not at all dispute abous the fact that originally there were in all 3 shifts working in this factory, and that their number was reduced to two in 1965, and ultimately, it was reduced to only one in November 1966, and that as a result thereof, the total strength of workmen in the factory was reduced to even less than one-third of its original strength and that the number of Setter-*cum*-leading hands continued to be the same as before till April 1967, when the retrenchment in question was effected. So I see no objection to accept the contention of the II Party Management in this behalf.

12. There can be no doubt about the fact that when the total number of shifts in the factory was reduced from three

to one, and as a result thereof the total strength of workmen in the factory was reduced to even less than one-third of its original strength, there would be no justification at all for retaining the original number of Setter-*cum* leading hands, who were workers of a higher grade drawing higher wages than ordinary workmen. It cannot also be disputed that the number of such workers of higher grade who were required to do the work of setting machines, and also to supervise the work of other workers, shall have to be proportionate to the number of shifts and the total number of workers in the factory, and if the Management is required to maintain a greater number of such workers than is necessary, it is likely to be put to loss and unnecessary expenses, which may result in the industry becoming uneconomical and unproductive. When all these factors are taken into account, it would be amply clear that the II Party Management cannot at all be said to be unreasonable and unjustified in retrenching some of the members of its Setter-*cum* leading hands, which appears to have been necessitated by the reduction in the total number of shifts from three to one, and also in the total strength of workers in its factory.

13. In this connection, it was submitted by Sri M. C Narasimhan, the learned counsel for the I Party, that the action taken by the II Party Management in retrenching five of its Setter-*cum*-leading hands was not at all *bona fide*, and the same had been brought about by it just with a view to penalise them for their trade union activities, particularly at an election of the office-bearers of their Union had taken place on 8th April 1967. Even supposing for a while that the election of the office-bearers of their Union took place on 8th April 1967, it would not be possible to infer therefrom that the retrenchment in question had been effected as a result thereof. If the Management had any grudge in this behalf, it would have tried to penalise all the office-bearers who had been elected on that occasion. It is in evidence that three persons by name Sri R. Madhava Rao, Sri Kashirao and Megharaj had also been elected as office-bearers at the said Election, and if the Management had any grudge against the Election as such, it would have tried to penalise these persons as well. It is an admitted fact that all these three persons have not at all been retrenched or penalised in any way and that they are serving in this factory even to this day. This would clearly go to show that there is no substance in the contention of the learned counsel for the I Party in this behalf.

14. There is also one more factor to be noted in this respect. The evidence on record would go to show that the idea of this retrenchment was not started for the first time after the said Election of the office-bearers of the I Party Union took place, and that the same had started at least some 2 or 3 months prior to that date, *i.e.*, just a month or two after the number of shifts in the factory was reduced to only one by about November 1966, as already stated above. In this connection, MW 1 states that in February 1967, they (Management) called the 9 setter-*cum* leading hands and informed them that the factory no longer required 9 setter-*cum* leading hands, and that they should assist in the operation of machines as they (Management) did not like to retrench them, and a notice as per Ext. M3 was also served upon them by taking their signatures on its reverse side. The contents of Ext. M3 would clearly go to show that the Management found that there was an excess number of Setter-*cum* leading hands, and that it was very anxious to retain them by giving them work about operating on the machines. It has also been mentioned therein that these surplus hands should co-operate with the Management in increasing production and they should thus justify their continuance. MW. 1 further states at page 7 of his cross examination that there was no proper response from the Setter-*cum*-leading hands to the proposal that they should work as operators though on the same pay, and hence retrenchment was necessitated as they did not need so many Setter-*cum*-leading hands, and that they did not have any grievance against any particular hands of this category, but it was against all the hands included therein. He also states at page 3 of his cross examination that the works Manager told him by about November 1966 that there was a surplusage of 5 hands in the Setter *cum*-leading category, and hence the same may be retrenched without suggesting the names of some particular hands for that purpose, and there after he suggested to him to see if the hands to be retrenched could be utilised on production machines as operators instead of being completely put out of the factory, and on that occasion the latter (Works Manager) informed him that he would consult these hands in this behalf, and accordingly a discussion was held between the Works Manager and these hands at his (Works Manager's) residence and he (MW. 1) was also invited to be present and all the setter-*cum*-leading hands also were present there then. He further states that he explained to these setter-*cum*-leading hand the circumstances which had given rise to the discussion, and told them that

if they were willing to work as operators on Production Machines, they (Management) would not retrench the surplusage, and they would be retained on the same pay as before, and they agreed to do so, and were assigned work accordingly. It is some time after this discussion that the letter Ext. M3 appears to have been issued when it was found that there was no proper co-operation from these hands in working as operators on machines.

15. As regards, the assertion of MW. 1 about the discussion between the Works Manager and MW. 1 on the one hand and the 9 Setter-*cum* leading hands on the other at the residence of the Works Manager, some time prior to 8th February 1967, it was submitted by Sri M. C. Narasimhan, the learned counsel for the I Party that there was no evidence about the same. But I cannot accept his submission in this respect, as this fact is admitted by WW. 2 Sri P. R. Ghorpade in his cross examination. He admits at page 3 of his cross examination that before 8th February 1967 all Setter-*cum* leading hands were called to the house of Work-Manager, and MW. 1 also was present on that occasion, and it was then explained by the Works Manager that as the shifts were reduced there would be no work for as many Setter-*cum*-leading hands and that all of them should be ready to work as Machine-operators. WW. 3 Abdul Rahim also admits about this fact in his cross examination. These admissions on their part would clearly go to show that the assertion of MW 1 in this respect must be true, and this would also go to show that the Management was very anxious to retain these hands on their old pay (of setter-*cum* leading hands) by making them work as operators on the machine, and its proposal in this behalf does not appear to have been carried out due to non-co-operation on the part of these persons. It is because of this that the subsequent letter Ext. M3, dated 8th February 1967 was issued to them requesting them to fully co-operate with the proposal of the Management in this behalf. When even this subsequent request was of no avail, the Management appears to have been compelled to resort to the last remedy of retrenchment, which was inevitable under the circumstances mentioned above.

16. When the various circumstance mentioned above are taken into account, it would appear that the Management was not at all bent upon in retrenching these hands, and that it was ready to retain them as operators on machines by giving them their old emoluments and that its idea in this behalf could not be carried out due to non co-operation on the part of these hands, and hence

it had no other alternative than to retrench the surplus hands, which was inevitable under the circumstances mentioned above. In view of all these reasons, I cannot accept the contention of the learned counsel for the I Party to the effect that action taken by the Management in retrenching the hands in question was not at all *bona fide*, and that it had been effected just because of the grudge against them and also with a view to victimise them, as some of them had been elected as office bearers of their union.

17. Now the next point for consideration would be whether the II Party Management has complied with the conditions mentioned in Sections 25F and 25G of the I. D. Act while effecting retrenchment of the setter-*cum*-leading hands in question. Sec. 25F lays down that the workman to be retrenched (1) shall be given one month's notice in writing indicating reasons for retrenchment, or shall be given wages for the period of notice, (2) and he shall also be given compensation equal to 15 day's average pay for every completed year of continuous service or any part thereof in excess of six months and (3) notice in the prescribed manner shall also be served on the appropriate Government or such authority as may be specified by the appropriate Government. Section 25G provides that where any workman in an industrial establishment, who is a citizen of India, is to be retrenched, and he belongs to a particular category of workmen in that establishment, in the absence of any agreement, between the employer and workmen in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retranches any other workman. We have, therefore, to see whether the II Party Management has complied with these conditions while effecting retrenchment of the workmen in this case.

18. I will first of all consider about compliance with the conditions laid down in sec. 25F of the Act, In this connection, MW. 1 Rathnakar Kailaje states that the five hands to be retrenched were individually served with notice of retrenchment and they were also paid one month's wages in lieu of Notice, and all the benefits to which they were entitled on retrenchment were also made available to them, and payments were also made in this behalf and the same were accepted. The office copies of Notices of retrenchment are at Exhibits M4 to M8, and each of them contains the acknowledgements of the concerned hands. MW. 1

further states that a copy of Notice in Form No. 'P' was also sent to the Government of Mysore, and the office copy about the same is at Exhibit M9, and the postal acknowledgement in that behalf is at Ext. M10. It is further seen from the retrenchment notices at Exts. M4 to M8 that one month's wages in lieu of the period of Notice and also compensation and other benefits payable as per Rules were also offered to the retrenched hands, and the latter do not at all dispute about the same either in the Claim statement or in their evidence at the time of hearing. So far as Sri P. R. Ghorpade (WW 2) is concerned, he admits in his cross examination that he was paid retrenchment compensation on the date of the Notice of retrenchment Sri Abdul Rahim (WW3) also admits in his cross examination that he had received the retrenchment notice and compensation and all of his dues. So far as Sri D. Paul (WW1) is concerned it is no doubt true that no answer has been elicited in this behalf in his cross examination. But from the fact that he does not specifically deny the assertion of MW. 1 to the effect that pay, compensation and other dues payable as a result of retrenchment had been paid to the concerned employees, and further as the assertion of MW 1 in this respect is not challenged in his cross examination may lead to an inference that the pay, compensation and other dues payable to a retrenched employee must have been paid to all the retrenched employees in this case. Taking all these factors into account, my conclusion is that the one month's pay, compensation and other dues payable as a retrenchement must have been fully paid to all the employees concerned in this case. It is further seen from what is stated above that the copy of retrenchment notice which is required to be sent to the State Government as per Sec. 25F(c) of the Act has also been sent. So it is clear that all the requirements of Sec. 25F of the Act have been duly complied with by the II Party Management.

19. Then I come to the question whether the provisions of Sec. 25G of the Act have been duly complied with by the Management. In this connection, MW1 Rathnakar Kailaje states that the seniority list of the setter-cum-leading hands had been prepared by the Management and it was displayed on the Notice Board of the Factory. Ext. M11 is the office copy of this notice which was displayed on the Factory Notice Board. As per this Notice, the seniority of the setter-*cum*-leading hands has been fixed as follows :—

(1) Mr. Syed Noor Ahamed.
(2) Mr. Kasi Rao.
(3) Mr. R. Megharaj

(4) Mr. K. Mohamed Hussain.
(5) Mr. N. Shivaji Rao.
(6) Mr. R. Ramdas.
(7) Mr. D. Paul.
(8) Mr. Abdul Rahim.
(9) Mr. K. R Ghorpade.

The retrenched hands in this case are at Serial Nos. 4, 5, 7, 8 and 9 in the said list. This would go to show that the principle of last come first go had been followed in the case of these hands except in the case of Sri R. Ramadas (Serial No. 6) who has not been retrenched. As regards this non-retrenched hand it is stated by MW. 1 that he was the only trained man on thread grinder, and hence he was retained in preference to two of his seniors. It would appear from Ext. M9 which is a copy of Form P sent to Government as required by Sec. 25F (c) of the Act that the reson stated by MW. 1 for retaining Sri R. Ramdas in preference to K Mohamed Hussain and N. Shivaji Rao has been specifically mentioned there in. It would also appear from the wording of Sec. 25(G) that though the employer is ordinarily expected to retrench the junior most hands, it would be open to him to depart from this normal course by recording reasons for the same. As the Management has stated specific reasons in this respect, and further as the reasons stated by it cannot be said to be in any way unreasonable or arbitrary, I think that the action of the Management in this behalf cannot be said to be illegal and also opposed to the provisions of Sec. 25G of the Act.

20. As regards the reason stated by the Management in Ext. M9 for retaining R Ramdas in preference to two of his seniors, the assertion of MW. 1 in that behalf does not appear to have been rebutted by any of the witnesses (WW.1 to WW. 4) examined on behalf of the I Party, by denying the assertion of MW. 1 about the same under these circumstances, I see no objection to accept the explanation given by the II Party Management in this behalf.

21. As regards the seniority list at Ext. M11 it was urged by Sri M. C. Narasimhan that it had not been properly prepared by the Management and as such it cannot be taken as the basis for effecting retrenchment. In this connection he urged that the seniority should have been fixed on the basis of the pay drawn by the concerned hands. But I think that while fixing seniority of workers working in the same grade of posts, the proper basis for the same would be the date of their joining service, and

the pay drawn by them cannot normally be taken as the basis. Even in Government service while fixing the seniority of officers working in the same grade or cadre of posts the date of their entry into it is taken as the basis, and the pay drawn by them is not usually taken as the basis. If we look to the gradation fixed as per Ext. M11, it would appear that the seniority of the setter-*cum* leading hands mentioned therein is fixed strictly on the basis of their entry into service, and the same cannot be said to be illegal or improper for the reasons stated above.

22. As regards the seniority list at Ext. M11, MW. 1 has sworn to the effect that it was put up on the Notice Board of the Factory and his assertion in this behalf does not appear to have been seriously challenged in his cross-examination. Moreover, MW. 2 P. R. Ghorpade admits in his chief examination itself that a seniority list like this (Ext. M11) had been put up on the Notice Board This admission on his part would go a long way in showing that such a seniority list had been put up by the Management on the Notice Board of the Factory. If that were so, I think that it was the duty of the setter-*cum*-leading hands to challenge about the seniority mentioned therein if they were in any way aggrieved by it. It is not the case of the I Party or of any of the witnesses examined on its behalf that any of the setter-*cum*-leading hands had ever put in any objections to the said seniority list. Under these circumstances, the said seniority shall be taken to have become final and conclusive, as none of the concered wrrkers appears to have raised any hbjection about the same before the Management. I cannot, therefore, accept the contention of the learned counsel for the I Party challenging the seniority fixed under Ext. M 11.

23. It was also urged by the learned counsel for the I Party that while retrenching the hands, the Management should have retrenched the least paid setter-*cum* leading hands, on the basis of 'least paid first go', instead of retrenching them on the basis of 'last come first go'. But I am unable to accept his submission in this behalf as according to the provision of Sec. 25G of the Act, the retrenchment shall have to be effected on the basis of seniority on the prenciple of 'last come first go', and further as it has not been mentioned therein that retrenchment should be effected on the basis of 'least paid first go.

24. Moreover under Rule 78 of the Mysore Industrial Disputes Rules, the seniority list of the staff required to be retren-

ched is required to be put up on the Notice Board of Factory in conspicuous place at least 7 days before the actual retrenchment In the present case the list at Ext. M 11 has been put on the Notice Board on 6th February 1967 which would be more than two months before the date of retrenchment. This would show that the Management has fully complied with the provisions of this Rule, and as such the party cannot make any grievance about the same.

25. Besides, if the I Party had got any grievance regarding this seniority list about its having not been properly prepared or published on the Board, it ought to have raised a specific contention about the same in its claim statement or reply. Absolutely no contention in this behalf has been raised by it in the said statements, and it is only at the time of hearing and arguments that a point in this behalf was sought to be made. Under these circumstances, I think that it would not be open to the I Party to make out a new case in this behalf only at the time of hearing.

26. It was also submitted by Sri M. C. Narasimhaiah for I Party that while preparing the seniority list, the Management ought to have prepared it in respect of all the Supervisory staff in Factory, and it was not justified in preparing the same only in respect of Setter-*cum*-leading hands. The first factory to be noted in this respct is that such a contention cannot be allowed to be raised only at the time of hearing or arguments without alleging anything about it in the claim statement. Even supposing for a while that such a contention can be raised at the time of hearing or arguments. I think that the course followed by the Management in this behalf cannot be said to be illegal or improper as the retrenchment sought to be made was only in respect of Setter-*cum*-leading hands which was a special category of posts, and this gould be a sufficient compliance with the provisions of Sec. 25 G of the Act, and also Rule 78 of the Mysore Industrial Disputes Rules, 1957, which provide that the retrenchment should be effected on the basis of the seniority fixed among the particular category of workmen who were to be retrenched. I cannot, therefore, accept the learned counsel for the I Party in this behalf.

26. It was also urged by Sri M. C. Narasimhan for the I Party that the last para of Ext.M3 indicated a suggestion of misconduct on the Part of setter-*cum*-leading hands in not co-operating with the proposal of the Management to the effect

that they should work as operators on machines, and that there was absolutely no evidence about the same on record, and as such there was absolutely no justification for the retrenchment effected by it (Management). The first factory to be noted in this respect is that the present reference does not at all relate to any misconduct on the part of the setter-*cum*-leading hands, and also to their dismissal or retrenchment on that account, but it refers only to the question whether their retrenchment by the Mangement was justified. Under these circumstances, it would not be possible to expect the Management to lead evidence about any such misconduct, as alleged by the learned counsel, and as such I cannot accept his argument in this behalf. Moreover, if we go through the contents of Ext. M3 it would appear that it does not at all purport to be any charge sheet against the Setter-*cum*-leading hands, and it purports to be only a last appeal or advice to them to fully co-operate with the proposal of the Management to have greater production by their showing better efficiency and discipline, and thus to justify their continuous in service. As already stated above, the contents of this Notice would show the sincere desire of the Management to retain these workers in service, by giving them an opportunity of operating on the machines, rather than try to discontinue their service by alleging some misconduct against them and when the attempt of the management in this behalf was of no avail it had no other alternative than to resort to retrenchment. I cannot therefore, accept the argument of the learned counsel for the I Party in this behalf.

27. I will then come to the authorities relied upon by both the parties in support of their respective contentions. So far as Sri B. Gopaliah, the learned counsel for the II Party Management is concerned, he relied upon only one Ruling reported in 38 Factory Journal Reporter page 164 (Parry & Co. Ltd., *Vs.* Second Industrial Tribunal Calcutta and others) which lays down the principles applicable to cases in which the question of retrenchment is involved. In this Ruling it has been laid down that if a scheme of reorganisation has been adopted by an employer for reasons of economy or convenience, the fact that its implementation would lead to the discharge of some of the workmen would have no bearing on the question whether the scheme was adopted by the employer *bona fide* or not, and the resulting discharge and retrenchment would have to be considered as irevitable consequence of such a scheme. It has been further laid down

that it is for the employer to decide the strength of his labour force and the number of workmen required by him to carry on his industry must be left to his discretion, and if the number of workmen exceeds the reasonable and legitimate needs of the undertaking, it is open to him (employer) to retrench the surplus men, the only restriction on his power in this respect being that the retrenchment must be shown as justified on proper reasons, that is that it was not capricious or without rhyme or reason. It has been also laid down that it is within the discretion of the Employer to organise and arrange his business in the manner he considers best, and so long as this is done *bona fide*, it is not competent of a Tribunal to question its propriety, so long as it is not actuated by any consideration for victimisation or unfair labour practice. The principles laid down in this Ruling would support the contention of the II Party Management in this case.

28. I will then come to the Rulings relied upon by the learned counsel for the I Party. The first of these Rulings is the one reported in 1964 (I) L.L.J. p. 333 (Workmen of Subog Tea Estate *Vs.* Subog Tea Estate) in which it has been laid down that though the Management has undoubtedly got power to retrench the surplus hands either on the ground of rationalisation or of economy, reasonably and *bona fide* adopted by it, it would not be justified in doing so without any reasons at all, *i.e.*, it should not try to reduce the labour force without any reason or rhyme. As the retrenchment which had been challenged in that case was not shown to have been effected for valid reasons, the same was set aside and the workmen were held entitled to reinstatement with continuity of service and back wages. As it cannot at all be said in the present case that the retrenchment was effected by the Management without any valid reasons, for the reasons already stated above, I think that this Ruling cannot be of any great help to the I Party in support of its contentions.

29 The second Ruling relied upon by the learned counsel for the I Party is the one reported in 1960 (I) L.L.J. p. 504 (Swadesa Mitra Ltd., *vs.* Their workmen) in which it has been laid down that while effecting retrenchment, the Management must generally follow the principle of 'last come first go' as provided in Section 25G of the I. D. Act, and it would be justified in departing from that principle for valid and satisfactory grounds, such as efficiency and trust-worthy character of employees, and if no such reasons are forth coming the action of the Management can be treated

as *mala fide* or as amounting to unfair labour practice. In the present case though the Management has departed from this principle in the case of Sri R. Ramadas, its action in this behalf cannot be said to be illegal or unjustified for the reasons already discussed above. So I think that this Ruling also cannot be of any great help to the I Party.

30. The third Ruling relied upon by the I Party is the one reported in 1962 (I) L.L.J. p. 409 (Indian Cable Co. Ltd., *vs.* its workmen) in which it has been laid down that when a company has got different branches at different places and when a question about retrenchment of the staff of one of the branches arises on account of its closure, it would not be possible to consider about the same (retrenchment) on the basis of the staff of all the branches, unless all the branches have got one scale of wages, and the Rules provide for automatic transfer from one branch to another. It was found in that case that each branch of the company was treated as an independent unit and the workmen had been recruited for the particular branches and the scales of pay also were separate, and hence it was held that the employees of the other branches could not be considered while effecting retrenchment of the staff of the branch which had been closed down. I do not think that this Ruling also can be of any help to the I Party in support of its contentions as the question involved here is quite different from the one involved therein.

31. The next Ruling relied upon by the I Party is the one reported in 1954 (II) L.L.J. P. 464 (East Asiatic Co. Ltd., vs. East Asiatic Co. Staff Union), in which it has been laid down that when a business of a company is run in various departments which are not treated as watertight compartments, and when the workmen in one Department are transferred to another Department the staff employed in the business as a whole must be taken as a unit for applying the principle of 'last come first go' in effecting retrenchment. There is no breach of the principle laid down in this Ruling in the present case, as the workers of the category of Setter-*cum*-leading hands working in different branches of the factory have been taken into account while effecting retrenchment in this case. According to the version of the Management there were in all setter-*cum*-leading hands in this factory by about that time, and they were all considered for retrenchment as already stated above. Even the witnesses examined for the I Party admit that there were in all 9 such hands by about that time, as can be seen from

para 1 of cross examination of WW. 3 Abdul Rahim, and para 2 of the Chief examination of WW 1 D. Paul. According to Sec. 25 F the retrenchment must be effected on the basis of seniority from among the workers of the particular category in which it has to be effected. When all these factors are taken into account it would appear that the principle laid down in the said ruling has not been abrogated in the present case and as such it cannot be of any great help to the I Party.

32. The last Ruling relied upon by the I Party is the one reported in 1956 (I) L.L.J. p. 227 (I. K. Iron and Steel Co. Ltd, vs. Iron and Steel Mazdoor Union) in which a question regarding the retrenchment of workmen due to shortage of raw materials was involved. The Industrial Tribunal had come to the conclusion that the shortage of raw materials was likely to continue only for a short period and hence it ordered for the reinstatement of workmen. In the Supreme Court, however, it was held that the order of the Industrial Tribunal was not proper, and the case was remanded to the lower court for fresh hearing with a direction to decide the same after deciding about all the issues. I do not think that this Ruling can be of any help to the I Party as it cannot at all be said in the present case that there were no justifying reasons for effecting retrenchment for the reasons already discussed above.

33. It was also submitted by Sri M. C. Narasimhan for the I Party that there was no consistency between the number of employees in the II Party Factory on different material dates, as deposed to by MW. 1 and those appearing from the documents at Exhibits M1, M2, M12, M13, M14 and M16. Though there might be some discrepancies in this respect, there can be no dispute or doubt about the fact that the total number of workers in the factory after November 1966 was even less than 1/3rd of its total strength prior to August 1965, when three shifts were working and that even then there was no reduction at all in the number of setter *cum*-leading hands till the retrenchment in question was effected. I cannot, therefore, attach much importance to this point urged on behalf of the I Party.

34. In view of the above discussion, my conclusion is that the II Party Management was perfectly justified in effecting retrenchment of the Setter-*cum*-leading hands in question, and hence I answer the first part of Issue No. 1 in the affirmative.

In view of this finding on the first part Issue No. 1 the workmen in question would not be entitled to any of the reliefs sought, such as reinstatement, back wages and continuity of service etc. So I answer the Second Part of issue No. 1 and also Issue No. 2 accordingly. Hence I pass the following Award :—

Award

As the Management was justified in retrenching the workmen in question, they are not entitled to any of the reliefs sought by them. No order as to costs.

S. T. KULKARNI,
Presiding Officer,
1557 *Additional Industrial Tribunal, Bangalore.*